IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Dipoto et al. Art Unit : 3731

Serial No.: 09/447,228 Examiner: Victor X. Nguyen

Filed : Nov. 11, 1999

Title : SUTURE ANCHOR AND DRIVE ASSEMBLY

Commissioner for Patents P.O. Box 1450

Alexandria, VA 22313-1450

REQUEST FOR RETURN OF ORIGINAL LETTERS PATENT

Application Ser. No. 09/447,228 was filed as a reissue of application Ser. No. 08/509,966, which issued as U.S. Pat No. 5/90,676 on Nov. 25, 1997. U.S. Pat No. 5,690,676 has since expired. ¹ As In re Morgan, 990 F.2d 1230, 1231 (Fed. Cir. 1993) clarifies, a reissue proceeding cannot continue following the expiration of the underlying natent. ²

Applicant submitted the original letters patent upon filing the reissue application and, as the reissue proceeding cannot continue, hereby requests its return. MPEP § 1416 states that "where the patentee has submitted the original letters patent in a reissue application subject to 37 CFR 1.178 as it is now amended," the original letters patent will be returned if "it can be readily retrieved from where it is stored." 37 CFR 1.178 was amended effective Oct. 21, 2004, but anolies retroactively to all nendring amblications. MPEP 8 1416. As such. 37 CFR 1.178 ambles

¹ Application Sex. No. 087999966 was a continuation of application Sex. No. 08791,092, filed Jul 12, 1993, now abandoned, which was a divisional of application Sex. No. 078136-697, filled Feb. 1, 1992, now US. Pat. No. 5,258,016 which was a continuation-in-part of application Sex. No. 07816,1042, filed Apr. 5, 1991, now abandoned, which was a continuation-in-part of application Sex. No. 1975,2444, filled Jul 1, 1990, which is was a Continuation-in-part of application Sex. No. 1975,2444, filled Jul 1, 1990, which is used at US. Patr. No. 5,100,417. Application Sex. No. 0575,2444, filled Jul 1, 1999, As such, its term of the Continuation of the Continuati

See Id. (The language of section 251 is unambiguous: the Commissioner has unbority to reliauce a patient only first the unexpired pair of the term of the original patient. (Thus, when Morgan's original patient expired on August 19, 1994, the Commissioner was divested of his reissue authority because there no longer was an unexpired term of the patient for which Morgan's patient could be reissued?.) See also MPTP § 141500 (75 US U.S. C. 251) representable, only authorities the granting of a reissue patient for the unexpired term of the original patient. Once a patient has expired, the Director of the USFTO to longer than the unbority under 50 US. C. 251 to reissue the

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to application Ser. No. 09/447,228, and Applicant can therefore expect the return of the original letters patent.³ Please return the original letters patent at your earliest convenience.

No fee is believed to be due. If, however, there are any charges or credits, please apply them to Deposit Account No. 06-1050.

Respectfully submitted,

Date: 11/03/10

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³ Even if application Ser. No. 991447_228 were to be considered abundoned at the time of this request, the policy of the United States Petern and Tradements Office supports the return of the original letters patrie in this case. See MPEP § 1416 "Example 6: A reissue application was pending at the time of the effective date of the amendment to 37 CFR. 1178, and a original letters patre was submitted. Applicatar requester term of the original tenters patre, although the application is abundoned at the time the request for return is made. In this instance, the Office would return the original letters patent if it a residily returnshell" per (imphassis in original).